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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		LUTZ 2 00227	
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	10/714,201	November 14, 2003	
	First Named Inventor		
	Patfield		
	Art Unit	Examiner	
	2645	Creighton H. Smith	
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the			
<input type="checkbox"/>	applicant/inventor.		
<input type="checkbox"/>	assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)		
<input checked="" type="checkbox"/>	attorney or agent of record. Registration number <u>41,687</u>		
<input type="checkbox"/>	attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		
		Signature <u>John P. Cornely</u> Typed or printed name <u>John P. Cornely</u> Telephone number <u>216-861-5582</u> Date <u>9-16-05</u>	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input type="checkbox"/>	*Total of _____ forms are submitted.		

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

INVENTOR(S) : Kevin M. Patfield  
TITLE : PRESENCE DETECTION FOR IP  
TELEPHONY  
APPLICATION NO. : 10/714,201  
FILED : November 14, 2003  
CONFIRMATION NO. : 2661  
EXAMINER : Creighton H. Smith  
ART UNIT : 2645  
LAST OFFICE ACTION : June 3, 2005  
ATTORNEY DOCKET NO. : LUTZ 2 00227  
Case Name/No. Patfield 3  
: Cleveland, OH 44114  
September 6, 2005

**REASON(S) FOR REQUESTING PRE-APPEAL BRIEF REVIEW**  
**(ATTACHMENT TO FORM PTO/SB/33)**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully submits the following reasons for requesting a pre-appeal brief review of the above-captioned matter.

**REMARKS**

Applicant has now had an opportunity to carefully consider the Examiner's comments set forth in the outstanding Office Action dated June 3, 2005. The rejection of the claims is traversed. Reexamination and/or reconsideration are respectfully requested.

### **Present State of the Claims**

Claims 1-5, 7-11, 13, 14, 16 and 18 stand rejected under 35 U.S.C. §102(b) as being anticipated by Skarbo, et al. (U.S. Patent No. 6,108,028, hereinafter referred to as Skarbo).

Claims 6, 12, 15 and 17 have been allowed.

### **General Overview**

Skarbo is directed to a method of activating and deactivating a screen saver in a video conferencing system **18**. Skarbo employs a presence detection subsystem **20** to determine if a user is present at the site of the video conferencing system **18**. The presence detection subsystem **20** employs, e.g., motion detectors, audio detectors, room temperature detectors, infrared detectors, or the like to determine if a user is present at the site of the video conferencing system **18**. See column 3, lines 14-33. When the presence detection subsystem **20** detects a user's presence, a screen saver process **12** is controlled accordingly via a control subsystem **19** (i.e., the screen saver is deactivated if a user's presence is detected). Alternately, if a user initiates a user input event (e.g., by moving a mouse, entering a key on a keyboard, etc.), the screen saver is deactivated directly by an operating system **10**. See column 3, lines 39-43.

In any event, **Skarbo teaches detecting the presence of a user and controlling a screen saver in response thereto**. On the contrary, the present application is directed to sensing or monitoring a state of a screen saver and determining therefrom whether or not a user is present. More abstractly, Skarbo takes as input a presence detection state and outputs a control signal that regulates the state of a screen saver, while the present application is directed to taking as input a screen saver state and outputting a signal that indicates the state of a user's presence. The teachings of Skarbo and the present application are in this sense opposite of one another. That is to say, the source of input for Skarbo is more akin to the output of the present application and the output of Skarbo is more akin to the source of input for the present application. In short, Skarbo does not teaching that a user's presence is determined based on the detected state of a screen saver. Rather, Skarbo teaches that the state of a screen saver is controlled based upon detecting the presence of a user.

### **Independent Claims 1 and 7 Define Patentably over Skarbo**

Claim 1 calls for detecting screen saver communications, and determining that a user is not present at a workstation when the detected communications are intended to result in screen saver activation, and determining that the user is present at the workstation when the detected communications are intended to result in screen saver deactivation. Claim 7 recites a module having means for performing similar actions. Accordingly, as claimed, user presence determinations are made based upon detecting a screen saver's activation and deactivation. Skarbo fails to expressly teach or fairly suggest the forgoing. Skarbo makes no user presence determination based upon screen saver activation and/or deactivation. Rather, Skarbo discloses controlling a screen saver's activation and/or deactivation based upon the detection of a user's presence. This disclosure simply does not read on the claim language.

Accordingly, claims 1 and 7 define patentably over the prior art, along with claims 2-5 and 8-11 depending therefrom.

### **Independent Claim 13 Defines Patentably over Skarbo**

Claim 13 calls for a "workstation" including "presence detection means for detecting a user's presence at the workstation from the state of the screen saver." Skarbo discloses no such presence detection means. The only presence detection means Skarbo discloses is the presence detection subsystem 20 which detects a user's presence from motion detectors, audio detectors, room temperature detectors, infrared detectors, etc., and an operating system 10 which detects a user's presence from user input events 14. None of the presence detection means disclosed by Skarbo detect a user's presence from or based upon the state of the screen saver. Rather, Skarbo teaches controlling the state of the screen saver based upon presence detection obtained from other means.

Accordingly, claim 13 defines patentably over the prior art, along with claims 14, 16 and 18 depending therefrom.

### **Rebuttal to the Outstanding Office Action**

To support the argument that Skarbo anticipates claims 1 and 7, the Office Action cites col. 2, Ins. 55-59 and col. 3, Ins. 5-10. However, the cited text merely discloses that before the screen saver process 12 is launch, the operating system (OS) 10 sends a message to check with other open windows to be sure that it is okay with

them to launch the screen saver. When one of these windows belongs the video processing system **18**, the video conferencing system **18** processes the message and inhibits launching of the screen saver if the video conferencing system **18** detects an active video conferencing session or detects a presence in the room or area of the video conferencing site.

First, the message send by the OS **10** cannot be fairly equated with the claimed screen saver communications that are detected, because the message is not intended to activate or deactivate the screen saver as claimed. Rather, the message send by the OS **10** merely checks with other processes to see if it is permissible to activate the screen saver.

Second, a determination of presence is not based upon the message sent by the OS **10**. Rather, the presence determination is made based upon whether or not there is an active video conferencing session or whether or not the presence detection subsystem **20** detects a presence (which does not determine presence based upon the current state of the screen saver).

Moreover, any communication from the video conferencing system **18** to the OS **10** cannot fairly be equated with the screen saver communications that are detected. As claimed, the screen saver communications that are detected are provided for on an interface between an operating system and a screen saver. A communication sent from the video conferencing system **18** to the OS **10** is not the same as a communication on the interface between the OS **10** and the screen saver **12**. That is to say, simply because Skarbo discloses that the video conferencing system **18** informs the OS **10** that it is permitted to activate the screen saver **12**, Skarbo does not teach detecting screen saver communications between the OS **10** and the screen saver **12**. On the contrary, nowhere does Skarbo teach detecting any communications between the OS **10** and the screen saver **12**, nor does Skarbo teach making a presence determination based upon such detected communications.

### CONCLUSION

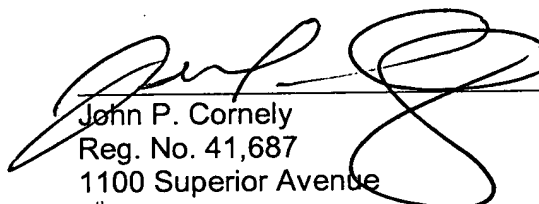
For the reasons detailed above, it is respectfully submitted that all the claims remaining in the application are in condition for allowance. In the event the personal contact is considered advantageous to the disposition of this case, please telephone the below signed at the listed number.

Respectfully submitted,

FAY, SHARPE, FAGAN,  
MINNICH & McKEE, LLP

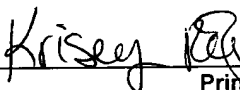
September 6, 2005

Date

  
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<b>Express Mail Label No.:</b>	<b>Signature</b>
<b>Date</b>	
<b>September 6, 2005</b>	<b>Printed Name</b>
	<b>Krisey Riley</b>

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